

**State of Michigan
CIVIL SERVICE COMMISSION
Public Meeting
September 28, 2007**

Present: Bryan J. Waldman, Chair
Andrew P. Abood, Commissioner
Sherry L. McMillan, Commissioner
Mac Wardrop, Commissioner
James D. Farrell, State Personnel Director

1. CALL TO ORDER

The meeting of the Civil Service Commission was opened by State Personnel Director, James D. Farrell at 8:40 a.m. in Conference Room A, Lower Level, Capitol Commons Center, 400 S. Pine Street, Lansing, Michigan. State Personnel Director Farrell welcomed the two newly appointed Commissioners to the Civil Service Commission, Mr. Andrew P. Abood, and Mr. Mac Wardrop.

Election of Chair

State Personnel Director, James D. Farrell, requested the election of a Chair due to the resignation of former Chair, F. Thomas Lewand. Commissioner McMillan moved to elect Bryan J. Waldman as Chair of the Civil Service Commission. Commissioner Abood seconded the motion and the motion passed.

a. Approval of Minutes

Chair Bryan Waldman requested a motion to approve the minutes of the August 21, 2007 meeting. On motion duly made and supported, the Commission approved the minutes of the August 21, 2007, meeting.

2. AMENDMENTS TO AGENDA

There were no amendments to the agenda.

3. NEW BUSINESS

a. Proposed Rule of General Applicability

Chair Waldman noted for the record the items being addressed and asked D. Daniel McLellan, General Counsel for the Commission, to provide explanation of the following agenda items relating to the proposed rule of general applicability:

- Rule 2-21, *Temporary Layoffs During a Fiscal Emergency*
- Resolution 07-06a – Waiver of 28-Day Notice
- Resolution 07-06b -- Rule of General Applicability
- Resolution 07-06c - approval of Rule 2-21.

General Counsel McLellan provided an explanation of the proposed rule of general applicability which would apply equally to all non-exclusively represented employees (NEREs) and to all exclusively represented employees.

General Counsel McLellan indicated the proposed use of the rule of general applicability would be for the specific purpose of regulating all temporary layoffs in the classified service between October 1, 2007 and November 3, 2007. General Counsel McLellan stated a motion may be necessary to amend the October 1, 2007 date to September 28, 2007, to provide for immediate effect in the event of possible notices being distributed to classified employees.

General Counsel McLellan further explained the temporary lay off rule would replace all collective bargaining provisions regarding temporary layoffs for a limited period which would apply to employment preference, recall, and notice for the 34 day period the rule would be in effect. The temporary layoff provisions of the collective bargaining agreements would resume at the end of the period. The purpose of the rule would be to effectively and equally apply layoffs to all employees in the classified service if a State shutdown were to occur.

General Counsel McLellan further stated the rule would authorize the appointing authority to temporarily layoff any state classified employee up to 20 cumulative days during the period up to November 3, 2007. He further explained that during a temporary layoff under the proposed rule, the benefits of all classified employees would continue, employment preference would not apply, employees would return to their same positions at the end of the temporary layoff. The rule would not establish standards for which employees would be laid off, or which employees would continue to work during a shutdown with the administration or appointing authorities determining essential services that would need to be continued.

4. PUBLIC COMMENT

Mr. M. Scott Bowen, Director, Office of the State Employer (OSE), addressed the Commission on behalf of the administration supporting the rule of general applicability due to the fiscal emergency the State of Michigan was facing. He indicated that with no budget in place for the next fiscal year, and with no experience to address these complex issues, and having examined all alternatives available in the event there is no budget by October 1, 2007, the current options under the agreement do not sufficiently meet an open ended fiscal emergency. The temporary layoff provisions in the collective bargaining agreements differ with regard to the reasons temporary layoffs may be invoked, the notice requirement, the duration of temporary layoffs, leave payoff, seniority rights and eligibility for insurance coverage.

Mr. Bowen provided historical information regarding the approval by the Civil Service Commission regarding Rule 6-3.6, Rules of General Applicability, whereby the Commission retains the authority to approve rules of general applicability during the term of any collective bargaining agreement and to apply the rule immediately to all classified employees including employees covered by collective bargaining agreements. He indicated the rule of general applicability has not been used to date for good reasons as it was designed for cases of emergency which the state is currently under. He stated if there

is no budget in place by 11:59 p.m. on September 30, 2007, the state cannot operate on October 1, 2007, and for equity across state service under the difficult circumstances, the Administration requests the Civil Service Commission to approve the proposed Rule 2-21, Temporary Layoffs During a Fiscal Emergency, as a rule of general applicability. He further explained the rule is limited and was designed to preserve employee benefits, including insurances, leave accruals, service credits, and ensures that employees who are temporarily laid off do not incur a break in service. Director Bowen indicated that while the Administration did not want to ask for this temporary rule, with the unprecedented event, and with no budget means and no constitutional authority to spend money from the state Treasury, he urged the Commission to approve the proposed rule as amended.

Mr. Mel Grieshaber, Executive Director, Michigan Corrections Organization (MCO-SEIU), spoke to the Commission in opposition of the proposed amended rule stating its main principle is to override the contract. Mr. Grieshaber urged the Commission to vote against Rule 2-21.

Mr. Roberto Mosqueda, President, Michigan State Employees Association (MSEA AFSCME), spoke to the Commission in opposition to the proposed amended rule. Mr. Mosqueda urged the Commission to reject the proposed rule.

Ms. Sandra Parker, President, United Auto Workers 6000 (UAW) and Mr. Phil Thompson, Executive Vice President, SEIU Local 517-M (Scientific & Engineering Unit) both spoke to the Commission regarding opposition to the proposed rule. Ms. Parker acknowledged Vice President UAW International, James Settles, Jr. in attendance to support the opposition of the rule. Ms. Parker outlined provisions in the UAW contract which protect state employees affected by any layoffs and stated that this rule would eliminate that protection. Ms. Parker defined "emergency" as an unforeseen combination of circumstances and stated that the budget crisis was not unforeseen. Ms. Parker urged the Commission to protect the rights of union and non-union employees and not adopt Rule 2-21.

Mr. Thompson spoke to the Commission and noted for the record that SEIU Local 517-M and the Coalition submitted letters to Governor Granholm on September 21, 2007, in opposition to the rule amendment. He provided historical information to the Commission regarding the December 12, 1998 adoption of Rule 6-3.6, Rules of General Applicability, and the concerns of the previous Commission when this Rule was enacted. Mr. Thompson outlined those concerns as to the authority of the Commission, and at what point the Commission would use the Rule 6-3.6, Rules of General Applicability. Mr. Thompson discussed specific reasons the previous Commission addressed regarding utilization of the Rule 6-3.6, Rules of General Applicability. He identified four items: 1) drug and alcohol testing, 2) smoke-free workplace (general application), 3) blood borne pathogens, and 4) Federal statute. He stated the previous Commission acknowledged that the Rule was for general application.

Mr. Thompson stated Rule 2-21 was an assault on the collective bargaining process by not following the contract on time notification. He noted that notification was given to all unions in the Spring of 2007 which later was rescinded and that OSE should be required to follow the contract. Mr. Thompson stated that the union contracts all have separate notification requirements which were bargained and that this rule takes away those bargained rights. Mr. Thompson asked the Civil Service Commission to reject Rule 2-21, and also requested the Commission to abolish Rule 6-3.6, Rules of General Applicability.

Chair Waldman asked for a practical understanding as to how this rule change would affect the members of SEIU Local 517-M, not just in regard to the notice requirement, but other impacts it would have. Mr. Thompson indicated pay, selection, seniority rights, and bumping rights would be affected. Ms. Sandra Parker, UAW, added that this rule also violates seniority rights.

Mr. Ed McNeil, Special Assistant to the President, AFSCME Council 25 (Institutional Unit) and Mark Smith, President of Local 3639, representing food service supervisors, dental aides, and LPN's in the Michigan Department of Corrections, collectively addressed the Commission. Mr. McNeil stated he concurred with the other unions addressing the Commission and that the proposed draft Rule 2-21 violates the current collective bargaining agreement between the State of Michigan and AFSCME Council 25 and that the current contract provides a process to deal with emergency layoffs requiring a 15 day notice rather than the usual 30 day notice. He defined an emergency as something sudden and unexpected which requires immediate action and stated that this "emergency" was not unexpected. Throughout the history of collective bargaining in state classified service, there is no precedence of this type of action. The inability of the legislature to find a comprehensive budget solution creates a crisis in all areas of government. He stated that this budget crisis does not justify the Commission adopting a rule to authorize a unilateral change to our contract in mid-stream. Mr. McNeil stated the Civil Service Commission provides for classified employees exclusively represented by labor organizations to bargain collectively with the State of Michigan and the purpose of employer – employee relationships is to provide employees with a voice in determining compensation and other conditions of employment. If the Commission adopts the proposed rule, it would have the effect of silencing those voices by taking unilateral action the Commission would abdicate its historic role and put in jeopardy any good will the state and its employees have built up over the years in the collective bargaining process. It would make it more difficult to resolve future contract negotiations and it would show a total disregard for concessions given over the years. Mr. McNeil urged the Commission to reject the proposed rule as it would have a substantial adverse impact on the bargaining process for all exclusively represented state employees.

Mr. Mark Smith, on behalf of his AFSCME members, spoke to the Commission in opposition to proposed Rule 2-21. He indicated the negotiation process must be protected and that the collective bargaining agreements came before this Commission for approval and to approve this rule would be going back on what the Commission had previously approved. Mr. Smith urged the Commission to oppose Rule 2-21.

Ms. Diane Garrison, Executive Director, Michigan State Police Command Officer's Association (MSPCO), representing the non-exclusively represented employee (NERE) command officers of the Michigan State Police addressed the Commission. Ms. Garrison stated that government has no purpose other than to serve and protect its citizens and to lay off highly trained and dedicated police officers willing to put their lives on the line for state citizens is contrary to the purpose of state government and police officers' solemn oath. Unless directly ordered by the Governor, the MSPCO Association will report to duty throughout the budget crisis and will do so without pay if necessary. She indicated the officers have a sworn solemn oath to protect the public and its laws and they remain faithful to that oath and will not be deterred by politics. Ms. Garrison urged the Commission to reject the rule.

Mr. Andre Friedlis, Association of State Employees in Management (ASEM), limited-recognition organization, spoke to the Commission in objection to Rule 2-21. Mr. Friedlis stated it was the Commission's constitutional authority to protect the wages and fringe benefits of all civil service employees.

Ms. Judy Woodson spoke to the Commission as a citizen of the State of Michigan and as an employee of the Department of Human Services who spoke in opposition of the proposed Rule 2-21 and asked the Commission to stand up to the legislature and vote no.

Mr. John F. Davis, retired dispatcher, member UAW Local 6000 addressed the Commission in opposition to the rule. A contract beats written law in many cases and takes precedence in many cases. This is a contract that is signed with state employees and now it's being asked that it be thrown out. Mr. Davis stated this is not an emergency crisis and asked that the Commission vote against Rule 2-21.

Mr. Mark Richard, state employee, MSEA, questioned why a union is necessary if the Commission can throw out inverse seniority.

Mr. Joseph Sloan, Hearing Officer, Department of Human Services, stated his position was 100 percent federally funded and if a layoff occurs, that money goes back to the Federal government. With no loss of funding, there should not be any loss of work.

On motion duly made by Commissioner Mac Wardrop, and supported by Commissioner Andrew P. Abood, the Commission took a brief recess at 10:00 a.m.

The Commission reconvened at 10:10 a.m. to address the motions before them.

Chair Waldman requested for the record that the names of those that completed cards who had taken a position in opposition to Rule 2-21 be noted. The comment cards are by reference a part of the record of this meeting. They are:

MSEA: Michael Kelley, Frank Gonzales, Rod Snyder, T. Jointer, Rick Jones
AFSCME: Wayne A. Koper, John Scott Whitman, Stacie Dineen, Bill Craft, Howard Weeks
UAW: Diane Doabrava, Kelly Rottenbenk, Susan Yenglin, Carol Erickson, Bill VanDriesscly, Michele Martin, Cassandra Wade, and one unidentified.

General Counsel McLellan indicated the approval of the Rule would require approval by the Commission on three separate resolutions in order for the Rule to take effect. Resolution 07-06a waives the 28 day notice requirement required in Rule 1-1.1. Resolution 07-06b provides a notice required in the Rules of General Applicability for the Commission to separately authorize the Rules of General Applicability to take effect immediately as to all employees during the term of collective bargaining agreements. Resolution 07-06c approves draft Rule 2-21, Temporary Layoffs.

On a motion duly made and supported, Resolution 07-06a – Waiver of the 28 day notice requirement was approved.

Commissioner Mac Wardrop moved to approve Resolution 07-06b – Notice: Rules of General Applicability, seconded by Commissioner Andrew P. Abood. Commissioners

Wardrop and Abood voted in favor. Chair Bryan J. Waldman and Commissioner Sherry L. McMillan opposed. The motion failed.

General Counsel McLellan stated to the Commission that draft Rule 2-21, if approved, would only apply to non-exclusively represented employees.

Commissioner Mac Wardrop moved to adjourn stating there was no further business to address. The motion was seconded by Chair Bryan J. Waldman. All supported.

7. COMMISSION APPEALS

In closed session via conference call on November 20, 2007, the Commission considered 14 recommended decisions of the Employment Relations Board. Copies of the review sheets indicating the Commission's actions on these decisions are on file with Civil Service.

ADJOURNMENT

There being no further items for Commission approval or public comments to be heard, Chair Bryan Waldman adjourned the meeting at 10:17 a.m.

NOTE

Copies of any written statements, reports, or staff proposals which were presented to the Commission may be obtained by contacting the Civil Service Commission, Executive Office, Capitol Commons Center, 400 S. Pine Street, P.O. Box 30002, Lansing, Michigan, 48909, or by telephone at 517-373-3020.

I, James D. Farrell, State Personnel Director, hereby certify that the foregoing are the Minutes of the Civil Service Commission Meeting of September 28, 2007.

State Personnel Director

Date